



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNSD MNR FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain an Order of Possession for unpaid rent or utilities and a Monetary Order for unpaid rent or utilities, to keep the security deposit, and to recover the cost of the filing fee from the Tenant for this application.

The Resident Manager affirmed that the Tenant was served the Notice of Dispute Resolution hearing documents and copies of their evidence on September 12, 2012 by registered mail. Canada Post receipts were provided in the Landlord's evidence. Based on the submissions of the Landlord I find the Tenant was sufficiently served notice of this hearing and I proceeded in his absence.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to a Monetary Order?

Background and Evidence

The Landlord submitted 22 pages into evidence which included, among other things, copies of: proof of service documents, a 10 Day Notice to end tenancy, the tenancy agreement, a notice to end tenancy issued by the Tenant, and a tenant ledger.

The parties entered into a fixed term tenancy that began on August 1, 2008 that switched to a month to month tenancy after July 31, 2009. Rent is payable on the first of each month in the amount of \$1,866.00 and on July 14, 2008, the Tenant paid \$845.00 as the security deposit.

The Resident Manager submitted that when the Tenant failed to pay September 1, 2012 rent a 10 Day Notice to end tenancy was posted to the Tenant's door on September 2, 2012. He confirmed that since issuing the 10 Day Notice the Tenant vacated the

property and returned the keys on September 17, 2012; however he did not pay the outstanding rent due for September 2012.

The Resident Manager stated that the rental unit is undergoing renovations for the full month of October and has been re-rented effective November 1, 2012.

The Landlord stated that they wished to withdraw their request for an Order of Possession and proceed with their request for a Monetary Order for September rent owing of \$1,866.00. Upon review of their application the Landlord acknowledged that they could not claim for parking as it was a separate contract and amended his application to claim for only the unpaid rent.

Analysis

The evidence supports that a 10 Day Notice to end tenancy was posted to the Tenant's door on September 2, 2012. The Notice is deemed to have been received by the Tenant three days after it was posted (September 5, 2012) and therefore the effective date of the Notice is corrected to **September 15, 2012**, in accordance with section 53 of the Act.

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent the *Act* stipulates that they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant did not pay the outstanding rent and vacated the property on September 17, 2012. The Landlord has regained possession of the unit and has withdrawn his request for an Order of Possession.

The Landlord also amended his monetary application to request only the September 2012 unpaid rent.

Section 26 of the Act stipulates that a tenant must pay rent when it is due in accordance with the tenancy agreement. In this case the Tenant failed to pay the September 1, 2012 rent and continued to occupy the rental unit until the 17th of the month.

Based upon the undisputed evidence before me, I find the Landlord is entitled to recover unpaid rent for the month of September 2012 in the amount of **\$1,866.00**.

The Landlord has succeeded with their application; therefore I award recovery of the **\$50.00** filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

September 2012 unpaid rent	\$1,866.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$1,916.00
LESS: Security Deposit \$845.00 + Interest \$5.92	<u>-850.92</u>
Offset amount due to the Landlord	<u>\$1,065.08</u>

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **\$1,065.08**. This Order is legally binding and must be served upon the Tenant.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 03, 2012.

Residential Tenancy Branch